

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT, et al.

Plaintiffs,

v.

No. CIV 11-0889 JB/KBM

ARIZONA PUBLIC SERVICE COMPANY, et al.

Defendants.

**AGREED ORDER REGARDING WITHDRAWAL OF MOTIONS
TO DISMISS WITHOUT PREJUDICE UNTIL STAY IS LIFTED**

1. On April 2, 2013, Defendants filed two motions to dismiss the claims in Plaintiffs' Amended Complaint. ECF Nos. 34 & 36. Defendants filed briefs in support, ECF Nos. 35 & 37; Plaintiffs filed briefs in opposition, ECF Nos. 43 & 44; and Defendants filed Replies, ECF Nos. 51 & 52. The United States Environmental Protection Agency (EPA) filed an amicus brief, ECF No. 41-2, to which Defendants filed a Response, ECF No. 62. The Utility Air Regulatory Group filed an amicus brief, ECF Nos. 54-2, to which Plaintiffs and Amicus Curiae EPA filed a response, ECF Nos. 62, 65. Defendants' Motions to Dismiss have been fully-briefed since August 3, 2012. *See* ECF Nos. 66 & 67.

2. On November 9, 2012, the Court scheduled a hearing on Defendants' Motions to Dismiss for November 15, 2012, ECF No. 69, but that hearing was continued at the parties' request on November 14, 2012, ECF No. 71.

3. On November 26, 2012, Plaintiffs and Defendants jointly moved the Court to stay the case until June 1, 2013 to give the parties time to discuss the potential settlement of this case. ECF No. 74.

4. On November 28, 2012, the Court granted the motion and issued its Order staying the case until March 1, 2013, and requiring the parties to file status reports every 30 days. ECF No. 75

5. On February 27, 2013, the parties jointly moved the Court to extend the stay until April 1, 2013 to allow continued settlement discussions, ECF No. 81, and the Court granted that motion on March 6, 2013, ECF No. 82. On March 29, 2013, the parties moved to further extend the stay to May 1, 2013, ECF No. 85, and the Court has granted that motion.

6. Plaintiffs and Defendants filed status reports on December 28, 2012, January 28, 2013, February 27, 2013, and on March 27, 2013. ECF Nos. 76, 77, 84. In their most recent status report, the parties report that, although they have been unable to reach a settlement, they continue to be engaged in substantive discussions and believe that these discussions are warranted and could lead to a settlement.

7. To facilitate the Court's administration of this action, Plaintiffs and Defendants have agreed that Defendants' Motions to Dismiss should be withdrawn until the current stay expires, provided that (a) no default shall be entered against the Defendants during the stay and for a period of ten days after the stay expires or is otherwise lifted; (b) within ten days after the stay expires, Defendants may reinstate the motions, and if the Defendants exercise that option, the motions will be considered ripe for decision without further briefing.

Accordingly, it is hereby ORDERED that:

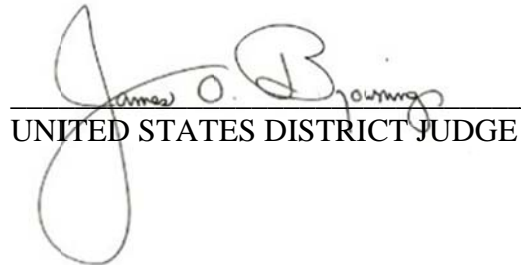
a. Defendants Motions to Dismiss, ECF Nos. 34 & 36, are hereby DEEMED WITHDRAWN without prejudice;

b. Within ten days of the expiration of the current stay of this action, Defendants shall either file an Answer or file a Notice reinstating their Motions to Dismiss. If Defendants

elect to reinstate their Motions to Dismiss, the Motions to Dismiss will be considered ripe for decision based on the existing briefing.

c. No default shall be entered against the Defendants during the pendency of the stay and for a period of ten days after the stay expires or otherwise is lifted.

It is so ORDERED.



UNITED STATES DISTRICT JUDGE

Agreed to:

/s/ Suma Peesapati

Suma Peesapati (admitted pro hac vice)
(CA Bar #203701)
EARTHJUSTICE
50 California Street, Suite 500
San Francisco, CA 94111
speesapati@earthjustice.org
(415) 217-2000
(415) 217-2040 (fax)

Robin Cooley (NM Bar # 14626)
EARTHJUSTICE
1400 Glenarm Place, Suite 300
Denver, CO 80202
rcooley@earthjustice.org
(303) 623-9466
(303) 623-8083 (fax)

Counsel for Plaintiffs

/s/ Douglas A. Baker

Douglas A. Baker
ATKINSON, THAL & BAKER, PC
201 Third Street, NW
Suite 1850
Albuquerque, NM 87102
dbaker@atb-law.com
(505)-764-8111

Mark B. Bierbower
Makram B. Jaber
HUNTON & WILLIAMS LLP
2200 Pennsylvania Ave., N.W.
Washington, D.C. 20037-1701
mbierbower@hunton.com
mjaber@hunton.com
(202) 955-1500

George P. Sibley, III
HUNTON & WILLIAMS LLP
951 E. Byrd Street
Richmond, Virginia 23219
gsibley@hunton.com
(804) 788-8200

Counsel for Defendants